(3)

C.J. 10d

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P. NO. 3311 /2004

Petitioner :

Brijesh Jagtap
S/o Ishwar Ram Jagtap
Aged about 51 years,
President,
Janpad Panchayat Dhamtari,
R/o Martha Para, Dhamtari,
District-Dhamtari (CG).

P.R. No. 3438/04
Presented by Shri Kunal Das
dated 22-9-04

Versus

Respondents :

1) State of Chhattisgarh
Through the Secretary,
Panchayat Avum Gramin
Vikas Vibhag, DKS hawan,
Raipur (CG).

2) The District Project
Coordinator,
Sarv Shiksha Abhiyan,
Dhamtari, Distt.Dhamtari.

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22/9/04
Clerk to A.G. Bilaspur

3) The Chief Executive Officer,
Zila Panchayat, Dhamtari,
District-Dhmatari (CG).

4) The Chief Executive Officer,
Janpad Panchayat,
Damtari, District-Dhmatari

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA

1

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

(P.I.L.) WRIT PETITION NO. 3304 OF 2004

PETITIONER Rajendra Prasad Maitri, Aged about 30 years, S/o. Sitaram Maitri, Unemployed Graduate, R/o. Village Purena Burha Police Station and Tahsil Dabhara, District Janjgir-Champa (C.G.)

P.R. No. 3351/04
Presented by Shri Rajendra Prasad Maitri
dated 17-9-04

VERSUS

RESPONDENTS 1. State of Chhattisgarh, Through; Secretary, Department of Panchayat and Rural Development, Dau Kalyan Singh Bhawan, Mantralay, Raipur

COPY 17/9/04 A. G. BILASPUR

2. The Chief Executive Officer, District Panchayat, District Janjgir (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT ORDER OR DIRECTION IN THE NATURE OF CERTIORARI, MANDAMUS OR OF ANY OTHER APPROPRIATE NATURE.

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.3304/04

Writ Petition No.3305/04

Writ Petition No.3306/04

Writ Petition No.3308/04

Writ Petition No.3311/04

Writ Petition No.3312/04

Writ Petition No.3360/04

Writ Petition No.3472/04

Writ Petition No.3521/04

Writ Petition No.3534/04

Writ Petition No.3535/04

Writ Petition No.3536/04

Writ Petition No.3581/04

Writ Petition No.3582/04

AND

Writ Petition No.3623/04

O R D E R

Post for: 4/2/2005

Sd/-
Ag. Chief Justice

4/2/2005

Sd/-
V.K. Shrivastava
Judge

1

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.3304/04
Rajendra Prasad Maitri
Vs.
State of Chhattisgarh & ors.

Writ Petition No.3305/04
Krishna Kumar Chakradhari
vs.
State of C.G. & ors.

Writ Petition No.3306/04
Das Ram Banjarey
vs.
State of C.G. & ors.

Writ Petition No.3308/04
Kailash Agrawal
vs.
State of C.G. & ors.

Writ Petition No.3311/04
Brijesh Jagtap
vs.
State of C.G. & ors.

Writ Petition No.3312/04
Vishwanath
vs.
State of C.G. & ors.

Writ Petition No.3360/04
Lakhan Lal Verma
vs.
State of C.G. & ors.

Writ Petition No.3472/04
Prahlad Singh Yadav
vs.
State of C.G. & ors.

Writ Petition No.3521/04
Smt. Saroj Bala
vs.
State of C.G. & ors.

Writ Petition No.3534/04
Ganga Prasad Choudhary
vs.
State of C.G. & ors.

Writ Petition No.3535/04
Shri Ram Pappu Baghel
vs.
State of C.G. & ors.

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Writ Petition No.3536/04
Nandhuram Khute
vs.
State of C.G. & ors.

Writ Petition No.3581/04
Ramfal Chandravanshi
vs.
State of C.G. & ors.

Writ Petition No.3582/04
Kanwal Ram Kaushik
vs.
State of C.G. & ors.

AND

Writ Petition No.3623/04
Lokesh Chandra Pandey
vs.
State of C.G. & ors.

Division Bench: Hon. Shri Fakhruddin, Ag. Chief Justice & Hon. Shri V.K. Shrivastava, J

ORAL ORDER

Per Fakhruddin, Ag. C.J.

The above writ petitions have been heard analogously and are being disposed of by this common order. W.P.No.3304/2004 shall be the leading case.

2. By these petitions under Article 226/227 of the Constitution of India, the petitioners have challenged the validity of the Rules, namely, Chhattisgarh Panchayat Shala Samvida Shikshak (Niyukti Tatha Sewa Shartein) Niyam, 2004 published on 10/8/2004 vide notification no.52/Pancha/22/04. The notification has been issued in exercise of the powers under Section 70(2) read with Section 95 sub section (1) of Panchayat Raj Adhiniyam, 1993, whereby the rules for appointment of contract teachers (Samvida Shikshak) have been enacted. It is contended that these rules are ultra vires, in contravention of the law and violative of Article 14 and 16 of the Constitution of India.

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3. It is contended that the advertisement was published for fulfilling the posts of Contract Teachers in Gram Panchayat, Janpad Panchayat and Zila Panchayat. It is also contended that the rules have been framed in exercise of executive powers under Article 162 of the Constitution of India. The challenge to the rules is on the ground that there is a provision for appointment for every interview of a local person, who is to be nominated by the local minister, so as to judge the local dialect. It is contended that for an interview the involvement of a minister through his nominee is illegal and in contravention of the law. It is said that the Veto powers have been conferred. There are three categories of Samvida Shala Shikshak, namely, Grade I, Grade II and Grade III. The Schedules appended are quoted below:

SCHEDULE – 1

{See Rule 2(b)}

S.No.	Classification of Samvida Shala Shikshak	Contract Amount (Consolidated and fixed)	Appointing Authority
(1)	(2)	(3)	(4)
1.	Samvida Shala Shikshak Grade-1	Rs.3500/-	Zila Panchayat
2.	Samvida Shala Shikshak Grade-2	Rs.3000/-	JanpadPanchayat
3.	Samvida Shala Shikshak Grade-3	Rs.2500/-	Gram Panchayat

SCHEDULE – 2

{See Rule 2(c) and Rule 5}

S.No.	Classification of Samvida Shala Shikshak	Minimum Age	Maximum Age	Minimum Educational Qualification	Scrutinising Committee
(1)	(2)	(3)	(4)	(5)	(6)
1.	Samvida Shala Shikshak Grade-1	21 years	35 years	At least Post Graduate Degree in the concerned	1 Chair-person - Member of the

				subject with second division or equivalent	concerned Zila Panchayat nominated by the Minister in-charge of the district. 2 Member Secretary Chief Executive Officer Zila Panchayat 3 Member-A person who is well versed in the local language, nominated by the Minister in-charge of the district Note: 1 At least one member of this Committee shall be from Scheduled caste/ Scheduled tribe/ Other back ward classes 2 District Education Officer and Assistant Commissioner Tribal Welfare may take part the meetings of the committee as special invitees to advise it.
2.	Samvida Shala Shikshak Grade-2	21 years	35 years	At least Graduate Degree in the concerned subject group with second division or equivalent	1 Chair-person - Member of the concerned Janpad Panchayat nominated by the Minister in-charge of the district. Member Secretary

					2 Chief Executive Officer Janpad Panchayat 3 Member-A person who is well versed in the local language, nominated by the Minister in-charge of the district Note: 1 At least one member of this Committee shall be from Scheduled caste/ Scheduled tribe/ Other back ward classes 2 Block Education Officer may take part the meetings of the committee as special invitee to advise it.
3.	Samvida Shala Shikshak Grade-3	18 years	35 years	Higher Secondary School Certificate of equivalent	1 Chair-person - Sarpanch of the concerned Gram Panchayat 2 Member Secretary -Secretary of the concerned Gram Panchayat 3 Member-A person who is well versed in the local language, nominated by the Minister in-charge of the

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					district Note: 1 At least one member of this Committee shall be from Scheduled caste/ Scheduled tribe/ Other back ward classes 2 Head Master of the concerned school may take part the meetings of the committee as special invitee to advise it.

SCHEDULE – 3

{See Rule 7(6)}

S.No.	Qualification	Percentage fixed for computing marks
(1)	(2)	(3)
1.	For marks obtained in the qualifying examination of the minimum educational qualification.	60 percent
2.	For B.Ed., B.T.I., D.Ed. certificate.	20 percent
3.	For State level sports certificate.	3 percent
4.	For National level sports certificate.	5 percent
5.	For Scouts and Guides having Governor's award.	3 percent
6.	For Scouts and Guides having President's award.	5 percent
7.	NCC-A certificate.	2 percent
8.	NCC-B certificate.	3 percent
9.	NCC-C certificate.	5 percent
10.	NSS-A certificate.	2 percent
11.	NSS-B certificate.	3 percent
12.	NSS-C certificate.	5 percent
13.	For knowledge of local dialect.	15 percent

4. Learned counsel for the petitioner referred to 73rd Constitutional Amendment, Article 243(G) of the Constitution and Eleventh Schedule (Item No.17), Education including Primary and

Secondary Schools. He further referred to Article 154, 164 and 166 of the Constitution of India. He also referred to the relevant provisions of Panchayat Raj Adhiniyam, 1993, such as Section 78 regarding Power of State Government to regulate taxes, Section 83 regarding Power of State Government in regard to relief in taxes, Section 85 regarding Power to suspend execution of orders, etc., Section 86 regarding Power of State Government to issue order directing Panchayat for execution of works in certain cases and Section 87 regarding Power of State Government to dissolve Panchayat for default, abuse of powers, etc. It is said that Section 95 relates to Power to make rules. Delegation of power conferred under Section 93 of the Adhiniyam. Learned counsel also referred to Article 243-C of the Constitution. It is submitted that under Section 47 of the Adhiniyam there are committees including education committee, which have been constituted by the Panchayat. It is further submitted that an appeal is provided under Rule 12 before the Sub Divisional Officer. It is also contended that for Grade III, there are Rules of 1994 namely M.P. Gram Panchayat (Term of Office of Members of Standing Committee and procedure for the conduct of business) Rules, 1994.

5. It will be appropriate to refer extensively the provisions of Section 47 of the C.G. Panchayat Raj Adhiniyam and Rule 3 of C.G. Gram Panchayat (Term of Office of Members of Standing Committee and procedure for the conduct of business) Rules, 1994, which are quoted below:

> *"**Section 47**. **Standing Committees of Janpad Panchayat and Zila Panchayat**- (1) Every Janpad Panchayat and every Zila Panchayat shall*

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from amongst its elected members constitute the following standing committees, namely:-

(a) General Administration Committee- For all matters connected with establishment and service of Janpad or Zila Panchayat Administration, Integrated Rural Development Programme Planning, Budget, Accounts, Taxation and other financial matters and subjects not covered by the functions allotted to any other committee;

(b) Agriculture Committee- For agriculture animal husbandary power, reclamation including soil conservation and contour bunding and fisheries compost manuring, seed distribution and other matters connected with development of agriculture and live-stock.

(c) Education Committee- For education including adult education, social welfare of the disabled and the destitutes, women and child welfare, removal of untouchability, relief of distress caused by floods, drought, earthquakes, hail storm, scarcity, locusts warms and other such emergencies, temperance or prohibition, health and sanitation, tribal and harijan welfare.

(d) Communication and Works Committee- For communication, minor irrigation, rural housing, rural water supply drainage and other public works.

(e) Co-operation and Industries Committee- For co-operation, thrift and small savings, cottage and village industries, markets and statistics.

(2) In addition to the five standing committees referred to in sub-section(1) a Janpad Panchayat or Zila Panchayat may with the approval of the prescribed authority, constitute one or more such committees for other matters not specified in the said sub-section.

(2-a) The Janpad Panchayat or Zila Panchayat may with the approval of the prescribed authority re-allocate the matters entrusted to any committee under sub-section (1) or sub-section(2) to any other such committees or entrust such committees any other matters not otherwise specified.

(3) The General Administration Committee shall consist of Chairman of all the Standing Committees specified in sub-section (1) and constituted under sub-section (2).

(4) Every committee except the General Administration Committee shall consist of at least five members to be elected by members, of the Janpad Panchayat or Zila Panchayat as the case may be, from amongst themselves in the manner prescribed:

Provided that a committee, may co-opt not more than two persons having experience or special knowledge of the subjects assigned to the Committee. The persons so co-opted shall not have

the right to vote in the proceedings of the Committee:
Provided further that the members of the Education Committee shall included atleast one women and a person belonging to Scheduled Castes or Scheduled Tribes.
(4-A)(a) Every member of the Legislative Assembly who is a member of Janpad Panchayat, shall be ex-officio member of each Committee of that Panchayat;
(b) Every Member of Parliament who is a member of a Zila Panchayat shall be ex-officio member of any two Committees of his choice in that Panchayat; and
(c) Every Committee of Zila Panchayat shall co-opt not more than two members of the Legislative Assembly who are members of that Panchayat, subject to the condition that a member of the Legislative Assembly shall not be member of more than two Committees.
(5) Every Committee except the General Administration Committee and the Education Committee shall elect from amongst its elected members a Chairperson within such time and in such manner as may be prescribed:
Provided that-
(i) The President of the Janpad Panchayat or Zila Panchayat, as the case may be, shall be officio Chairperson of the General Administration Committee;
(ii) The Vice President of the Janpad Panchayat or Zila Panchayat, as the case may be, shall be ex-officio-Chairperson of the Education Committee; and
(iii) The President and Vice President of the Zila Panchayat and Janpad Panchayat, as the case may be, shall not be member of any Committee other than the Committee of which he is the Chairperson by virtue of clauses (i) and (ii) of this proviso.
(6) Every Committee shall, in relation to the subject assigned to it exercise such powers and perform such of the functions of the Panchayat or Zila Panchayats as the case may be, as may be prescribed.
(7) No person shall be a member of more than three committees other than General Administration Committee at a time."

Rule 3 of Rules of 1994. Standing Committees- *(1) Every Gram Panchayat may from amongst its Panchas constitute the following standing committees, namely:-*

(a) General Administration Committee.-For all matters connected with establishment and service of Gram Panchayat administration,

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approval of construction plan in Gram Panchayat Area, Budget, Accounts, Taxation and other financial matters, land Development and Protection, Food and Civil Supplies, Revenue, 20 point programme and all other matters assigned to the Gram Panchayat and not allotted to any other committee.

(b) Construction and Development Committee.-For planning, managing, implementation and supervision of all construction works in Gram Panchayat area, planning, budgeting and implementation of layout, schemes and programmes, improvement of communication of all types, special emphasis of development of village, cottage and Khadi Industries, gardens and parks specially for women and children, proposing self projects for future construction, Rural electrification, forest, public health engineering, dairy, agriculture and irrigation.

(c) Education, health and social welfare committee.-For inspection of all schools in the Gram Panchayat area, certification of attendance of teachers during the previous month by the 5th of every month, promotion of and assistance for non-formal education, adult literacy, promotion and inspection of all welfare schemes including ICDS Anganwadi, Balwadi and Social Security Pension, Vaccination and family planning programme, inspection of health and family welfare schemes and health centers in Gram Panchayat area and certification of their attendance, formation and implementation of welfare Scheme for socially backward and handicapped sections and persons of the society, hygiene and sanitation in Gram Panchayat area. Women and Chief Development, Social Welfare Department and Social Programmes for Scheduled Castes, Scheduled Tribes and other Backward Classes and for those who are below poverty line. Fishery, Sports and Labour.

(2) Every Committee shall consist of four members who shall be elected by the Panchas from amongst themselves in a meeting of a Gram Panchayat specially called for the purpose. The Sarpanch and Up-Sarpanch shall be ex-officio members of all the Committees.

(3) The Sarpanch shall be the Chairman of all the Committees."

6. It is contended that earlier to issuance of the notification, the State of Madhya Pradesh in exercise of powers conferred by sub-

section (2) of Section 53, sub-section (1) of Section 70 read with sub-section (1) of Section 95 of the M.P. (C.G.) Panchayat Raj Adhiniyam, 1993 enacted the rules known as M.P. Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules 1997 wherein as far as possible the attempts have been made to keep intact the autonomy of the Panchayats by providing the Standing Committee of Education in Selection Committee and making the Chairperson of it. It is further contended that the State Government has for maintaining the sovereignty of Panchayats issued the said Rules in exercise of powers conferred by sub-section (2) of Section 53 of the aforesaid Act. It is also contended that for awarding marks to candidates having knowledge of local dialects, 15% for oral test have been kept which was to be allotted according to assessment made on the basis of test for communication skills in local dialect, knowledge of local environment, general knowledge, training and teaching aptitude and any other test which the Selection Committee may deem fit. The said rules have been adopted by the Chhattisgarh State when the State formed as a result of the M.P. Reorganization Act, 2000 and this fact has been frankly admitted by the learned Addl. Advocate General during the course of arguments.

7. To appreciate the aforesaid contentions Section 53 of the Panchayat Raj Adhiniyam which deals with the Power of State Government in relation to functions of Panchayats is pertinent and is quoted below:

> *"53. **Power of State Government in relation to functions of Panchayats** (1) (a) Subject to such conditions as may be specified by general or special order issued by the State Government, the Panchayat at the appropriate level shall have the powers and authority as may be necessary to*

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enable them to function as institutions of self government in relation to matters listed in Schedule IV, including preparation of plans, implementation of schemes for economic development and social justice, and other duties and functions assigned to them under Sections 49,49-A,50,52 and Chapter XIV-A.

(b) The State Government may by notification endow Panchayats at the appropriate level with powers and responsibilities for selection, recruitment, appointment and management of any cadre or cadres of employees required for the efficient implementation of schemes, subject to the staffing pattern approved by the State Government and such other conditions as it may deem fit.

(2) The State Government may, by general or special order, add to any of the functions of Panchayats or withdraw the functions and duties entrusted to such Panchayats, when the State Government undertakes the execution of any of the functions entrusted to Panchayat. The Panchayat shall not be responsible for such functions so long as the State Government does not re-entrust such functions to the Panchayats."

8. It is vehemently contended that the inclusion of nominee of the Minister in-charge of the district in the scrutinizing committee and the provision of nominating the Chairperson of the Committee at his behest is violative of Constitution and Act of 1993 and it encroaches upon the autonomy of Panchayat granted by the Constitution. Learned counsel for the petitioner referred to Article 40 of the Constitution of India, Constituted Assembly of India-Debate dated 22/11/1948, the statement of objects and reasons appended to Constitution (Seventy Second Amendment) bill 1991, Article 243-B, 243-C, 243-G of the Constitution and Eleventh Schedule (Item No.17) enacted under Article 243-G(2) of the Constitution. He relied upon the judgment of the Apex Court in the case of ***State of U.P. & Ors. vs. Pradhan Singh & Ors.*** reported in ***(1995) Supp.(2) SCC 305.***

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9. It is further contended that such a nomination is contrary to the provisions of Section 53 of the Adhiniyam. Reference is made to Section 47(5), Section 53(1)(a)(b) and Section 70(2) of the Adhiniyam. Reliance is placed upon the judgment of the High Court of M.P. in the case of ***Janpad Panchayat Tatha Zila Panchayat Karmachari Sangh and others vs. State of M.P. & Ors.*** reported in ***1998(1) JLJ 336***. So far as the inclusion of Minister is concerned, reliance is placed upon the judgments of the Apex Court in the cases reported in ***AIR 1963 SC 395 (Bachhittar Singh vs. State of Punjab), 2003(5) SCC 134 (J.P. Bansal vs. State of Rajasthan and another), 1977(4) SCC 608(State of Karnataka vs. Union of India and another) and 1997(1) SCC 35(Secretary, Jaipur Development Authority, Jaipur vs. Daulatmal Jain and others)***. Argument regarding awarding of marks for knowledge of local dialect is concerned, reliance is placed upon the judgments of the Apex Court in the cases reported in ***AIR 1995 SC 914(V.N. Sunanda Reddy and others vs. State of Andhra Pradesh and others)***. Reliance is also placed upon the judgments reported in ***2002(6) SCC 562 (Kailash Chand Sharma vs. State of Rajasthan and others).***

10. Learned counsel also placed reliance upon the judgment of the Apex Court reported in ***2002 (6) SCC 393 (Harshendra Choubisa and others vs. State of Rajasthan and others)***. It is contended that so far as Rule 7(2) is concerned, the vacancy for the year is to be notified by the authorised officer to the appointing authority every year and the concerned Panchayat has no say in the matters of vacancy. It is also contended that the awarding of

15% marks for knowledge of local dialect is arbitrary and unreasonable. Veto powers are with the Selection Committee.

11. Return has been filed on behalf of the State raising the defences and opposing the petitions. It is contended that the rule has been framed keeping in view the exigency and the requirement. It is also contended that the appointments are to be made under the temporary Scheme namely Sarva Shiksha Abhiyan floated by the Govt. of India, Department of Education. The main thrust of the Scheme is to attain the object of education to all by the year 2010 and attain universal elementary education in the country in a missionary zeal. The entire object is to provide teachers with the involvement of the Society at the grass root with the help of decentralized, context specific planning with an attempt to bridge social and gender gaps with the active participating of the Community in all aspects of the matter.

12. Shri Prashant Mishra, learned Addl. Advocate General for the State, in support of the contention relied upon the judgment of the Apex Court in the case of ***English Medium Students Parents Association vs. State of Karnataka and others*** reported in ***AIR 1994 SC 1702*** (Paras 18 to 26) and contended that Article 350 and 350-A of the Constitution coupled with the object of the Serva Shiksha Abhiyan have to be read in. It is contended that 22249 teachers are to be appointed. Learned counsel further contended that the validity is to be presumed unless contrary is shown. Reliance is placed upon the judgment of the Apex Court in the case ***In re The Kerala Education Bill, 1957*** reported in ***AIR 1958 SC 956***. Reliance is also placed upon the judgments of the Apex Court in the cases of ***ITC Ltd. & ors. vs. State of Karnataka***

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reported in ***1985 (Supp) SCC 476*** and ***In re Special Courts Bill, 1978*** reported in ***AIR 1979 SC 478.***

13. Learned counsel also relied upon the judgment of the Apex Court in the case of ***St. Johns Teachers Training Institute vs. Regional Director, National Council For Teacher Education and another*** reported in ***2003(3) SCC 321*** (Paras 10,11 and 12) that there is presumption of the constitutionality of a statute.

14. Reliance is also placed upon the judgment of Apex Court in the case of ***P.M. Ashwathanarayana Setty and others vs. State of Karnataka and others*** reported in ***1989 Supp.(1) SCC 696*** wherein it has been held that lack of perfection in a legislative measure does not necessarily imply its unconstitutionality and ultra vires and it is rightly said that in such a complex arena in which no perfect alternative exist, the Court does well not to impose too rigorous a standard of criticism, under the equal protection clause, reviewing fiscal services.

15. Reliance is also placed upon the judgment of the Apex Court in the case of ***The Collector of Customs, Madras vs. Sampathu Chetty*** reported in ***AIR 1962 SC 316*** wherein it has been held that a statute cannot be declared ultra vires and so invalid because the power conferred by it on the authorities is likely to be misused by them if it passes the test of constitution.

16. Reliance is also placed upon the judgment of the Apex Court in the case of ***Deep Chand vs. State of U.P.*** reported in ***AIR 1959 SC 648*** that the Court cannot declare any law as void on the ground that it contravenes any of the directive principles of State policy in Part IV of the Constitution.

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17. Lastly learned Addl. A.G. submitted that even if the Court finds some lacuna/drawback, then instead of declaring the rules ultra vires, some guide-lines may be issued. It is contended that the Courts of today cannot and do not any longer remain passive with the negative attitude merely striking down a law or preventing something being done. It is also contended that the Court can give positive directions in the manner. Learned Addl. A.G. relied upon the judgment of the Apex Court in the case of ***State of Kerala vs. T.P. Roshana & ors*** reported in ***AIR 1979 SC 765*** and contended that the Court should not rigid attitude of negativity and sit back after striking down the scheme of Government, leaving it to the helpless Government caught in a crisis to make-do as best as it may, or throwing the situation open to agitational chaos to find a solution by demonstrations in the streets and worse.

18. Learned Addl. A.G. also relied upon the judgments of the Apex Court in the case of ***Maharashtra State Board of Secondary & Higher Secondary Education vs. Paritosh*** reported in ***AIR 1984 SC 1543*** , wherein it has been held that any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act.

19. We have briefly stated hereinabove the contentions raised in the petitions, the arguments advanced in support of the contentions, the return filed by the State. We have also considered the judgments cited by the rival parties. We also provided the

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opportunities to the learned Addl. Advocate General to produce the material, if any, and the data collected by the State.

20. It will be appropriate to note that the petitioner in W.P.No.3308/2004 has submitted Annexure-P/3, which is the rules framed known as Madhya Pradesh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997. The argument is that on the date of reorganization of the State of Chhattisgarh on 1-11-2000 these rules were in force. Learned Addl. Advocate General was pointedly asked regarding this fact. He stated that these rules were adopted by the State of Chhattisgarh. These rules were framed in exercise of the power conferred by sub-section (2) of Section 53, sub-section (1) of Section 70 read with sub-section (1) of Section 95 of the M.P. (C.G.) Panchayat Raj Adhiniyam, 1993 (No.1 of 1994). Rule 2(b) defines that 'appointing authority' in respect of Shiksha Karmi means the authority mentioned in column (5) of Schedule I. Rule 2(c) defines the 'committee' means the Selection Committee or Promotion Committee constituted to appoint or promote Shiksha Karmis as given in the Schedule II and IV respectively. Schedule II is annexed which shows that for Shiksha Karmi Grade-I members of the Selection Committee were (i) Chairperson, Standing Committee of Education of Zila Panchayat; (ii) Chief Executive Officer, Zila Panchayat; (iii) Deputy Director, Education or Assistant Commissioner, Tribal Welfare, as the case may be (Member Secretary); (iv) Two Experts in the subjects nominated by the Standing Committee for Education of whom one shall be a woman; and (v) All members from the Standing Committee of Education of whom atleast one belongs to SC or ST or OBC. In case there is no

SC/ST/OBC member in the Standing Committee then the same shall be nominated from the General Body. For Shiksha Karmi Grade-II members of the Selection Committee were the same as of Grade-I. For Shiksha Karmi Grade-III members of the Selection Committee were (i) Chairperson, Standing Committee of Education of Janpad Panchayat; (ii) Chief Executive Officer, Janpad Panchayat; (iii) Block Education Officer, (Member Secretary); (iv) Two specialist in the subject to be nominated by the Standing Committee for Education of whom one shall be woman; and (v) All members from the Standing Committee of Education of whom atleast one belongs to Scheduled Castes, Scheduled Tribes or OBC. In case there is no SC/ST/OBC member in the Standing Committee, then the same shall be nominated from the General Body.

21. In the aforesaid connection, it will be appropriate to refer to Rule 5 sub-rule (9) wherein the Committee was to assess the candidates called for interview and award marks. In clause (i)(c) of sub-rule (9) of Rule 5, it has been mentioned that 15% marks for oral test will be given which may include the test for (i) communication skills in local dialect; (ii) knowledge of local environment; (iii) general knowledge; (iv) training and teaching aptitude and (v) any other test which the Selection Committee may deem fit. Selections were made pursuant to these rules and the process was challenged. The Court held that the remedy as provided in Rule 12 of the Appointment Rules is proper, alternative remedy. It is efficacious, speedy and expedient. The petitions were disposed of vide order passed in the case of ***Mohd. Yusuf vs. State of Madhya Pradesh*** reported in ***1999 (2) JLJ 156***. The said

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judgment is not very much relevant for the purposes of these writ petitions.

22. In 2001, the State of Chhattisgarh framed rules under Sections 70(2) and 95(1) of the Panchayat Raj Adhiniyam, 1993 which are known as Chhattisgarh Panchayat Shala Shiksha Samvida Shikshak (Niyukti Tatha Seva Shartein) Rules, 2001. Rule 2(c) of these rules defines 'Samiti', which reads as under:

> "समिति से अभिप्रेत है अनुसूची–दो में दिये गये अनुसार संविदा शाला शिक्षक की नियुक्ति के लिए गठित की गयी चयन समिति"

Schedule II is annexed which shows that for Shiksha Karmi Grade-I, II & III, members of the Selection Committee were as under:

श्रेणी	चयन समिति के सदस्य
1	(1) सभापति , जिला पंचायत की सामान्य प्रशासन समिति । अध्यक्ष (2) मुख्य कार्यपालन अधिकारी , जिला पंचायत । सदस्य (3) यथास्थिति , जिला शिक्षा अधिकारी या सहायक आयुक्त , आदिवासी विकास । सदस्य सचिव (4) अध्यक्ष , जिला योजना समिति द्वारा नामांकित दो विषय विशेषज्ञ जिनमें से एक महिला सदस्य होगी । सदस्य (5) सामान्य प्रशासन समिति के समस्त सदस्य जिनमें से एक अनुसूचित जाति , अनुसूचित जनजाति या अन्य पिछडा वर्ग का हो । यदि सामान्य प्रशासन समिति में अनुसूचित जाति , अनुसूचित जनजाति या अन्य पिछडे वर्ग के सदस्य उपलब्ध न हो तो ऐसे सदस्य सामान्य सभा से नामनिर्दिष्ट किये जायेंगे । सदस्य (6) अध्यक्ष , जिला योजना समिति द्वारा नामांकित एक सदस्य ।
2	(1) सभापति , जनपद पंचायत की सामान्य प्रशासन समिति । अध्यक्ष (2) मुख्य कार्यपालन अधिकारी , जनपद पंचायत । सदस्य (3) यथास्थिति , जिला शिक्षा अधिकारी या सहायक आयुक्त , आदिवासी विकास । सदस्य सचिव (4) सामान्य प्रशासन समिति द्वारा नामनिर्दिष्ट दो विषय विशेषज्ञ , जिनमें से एक महिला सदस्य होगी । सदस्य (5) सामान्य प्रशासन समिति के समस्त सदस्य जिनमें से एक अनुसूचित जाति , अनुसूचित जनजाति या अन्य पिछडा वर्ग का हो । यदि सामान्य प्रशासन समिति में अनुसूचित जाति , अनुसूचित जनजाति या

अन्य पिछडे वर्ग के सदस्य उपलब्ध न हो तो ऐसे सदस्य सामान्य सभा से नामनिर्दिष्ट किये जायेंगे ।

सदस्य

3 (1) सरपंच , ग्राम पंचायत ।

अध्यक्ष

(2) उप सरपंच ।

सदस्य

(3) एक महिला पंच ।

सदस्य

(4) एक पंच जो कि अ0जा0 / अ0ज0जा0 का हो ।

सदस्य

(5) स्कूल के प्रधान अध्यापक ।

सदस्य सचिव "

23. Learned counsel referred to Rule 5 sub-rule (8) wherein the Committee was to assess the candidates called for interview and award marks. In clause (i)(c) of sub-rule (8) of Rule 5, it has been mentioned as under:

"(8) (एक) समिति अभ्यर्थियो का आकलन तथा अंक निर्धारण निम्नानुसार रीति से करेगी –

1. विहित अर्हता परीक्षा में अभिप्राप्त अंकों के लिए–75 प्रतिशत ।
2. बी.एड./बी.टी.आई./डी.एड. प्रमाण–पत्र के लिए–10 प्रतिशत ।
3. स्काउट और गाइड्स/एन.सी.सी. प्रमाण–पत्र–05 प्रतिशत ।
4. स्थानीय बोली के ज्ञान के लिए–10 प्रतिशत ।
   अगर स्थानीय बोली का ज्ञान हो, तो 10 प्रतिशत अंक दिया जाएगा एवं नहीं होने की स्थिति में शून्य प्रतिशत अंक दिया जाएगा । चयन समिति इसी मापदण्ड के आधार पर मूल्यांकन करेगी । अंक बराबर होने की दशा में अंतिम चयन लाटरी के माध्यम से ड्रा निकाल कर किया जाएगा ।"

24. Learned counsel for the petitioner as well as learned Addl. Advocate General pointed out that by executive instructions, 10% marks of local dialect were enhanced to 25% and that is also a separate matter of challenge before this Court. The contention is that the provisions of Section 47 of the Panchayat Raj Adhiniyam provide Standing Committee including General Administration Committee and Education Committee and those were the persons who were included in the Rules of 1997 and taking away the

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powers from those Committees constituted under the Act is an interference with the autonomy of the Panchayat. It is contended that this power should be exercised by them and no interference. In any case they are violative of the provisions of Section 47 of the Adhiniyam. It is also contended that Section 47 has been amended by 73rd amendment. The aims and object of self governance are though the Panchayat Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, election, prolonged supersessions, insufficient representation of weaker sections.

25. The Apex Court in the case of ***State of U.P. vs. Pradhan Singh (Supra)*** has held as under:

> *"2. The Constitution (Seventy-third Amendment) Act, 1992 came into force on 24/4/1993 to give effect to one of the Directive Principles of State Policy, viz. Article 40 of the Constitution of India which directs the State to organize village panchayats as units of self-government.*
>
> *7. The provisions of Article 40, to give effect to which the 73rd Constitutional Amendment was effected read as follows:*
>
> *'40. Organisation of village panchayats-The States shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.'*
>
> *The aforesaid provisions neither define 'village' nor give guidelines for organizing village panchayats. All that they require is that the village panchayats, howsoever organized, have to be equipped with such powers and authority as may be necessary to enable them to function as units of self government. There is, however, no doubt that when the article speaks of village panchayats as units of self-government, it has in view the organisation of the lowest level units of self-governance in the hierarchy of self-governing, democratic, policy-making and administrative units. In other words, the village panchayats are envisaged by the article as the base democratic institutions of a*

pyramid of the democratically organized and functioning self-governing units. This being so, while organizing the village panchayats, what is necessary to be kept in mind is (a) that they are to be the self-governing units at the lowest end of the democratic polity, (b) that being self-governing units, those who are governed by the said units and for whose benefit they are going to operate, will have either a direct or an elective indirect representation in them; (c) that they will have an effective say in the conduct of their affairs including its plans, policies and programmes and their execution and (d) that thus they will have not only a sense and satisfaction of participation but also an experience in the governance of their own affairs. So long as the village panchayats are organized to achieve the said objectives, the requirements of the said article will have been complied with both in their spirit and in letter.

10. Article 243(b) defines 'gram sabha' to mean a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level. In other words, it is the electorate of the village panchayat whether the panchayat is for one village or a group of villages. Article 243(d) defines 'panchayat' to mean an institution (by whatever name called) of self-government constituted under Article 243-B for the rural areas. This provision further makes it clear that even the expression 'panchayat' is not of any particular significance. What is of essence is that the institution so called must be of self-government in the rural area since the panchayat raj envisaged by the said Part of the Constitution is for the rural as against the urban areas for which a provision is made in another part of the Constitution. Much sentiment may not, therefore, be wasted on the expression 'panchayat'. The attention on the other hand, has to be focused on the question whether the institution so constituted is self-governing or not.

14. Article 243-D makes provision for reservation of seats for the Scheduled Castes, Scheduled Tribes including women belonging to Scheduled Castes/Scheduled Tribes and also for other women in the panchayats at all the levels. Article 243-E provides for the term of the panchayat which is five years. Article 243-F provides for disqualifications for the membership of the panchayat. Article 243-G speaks of powers, functions and responsibilities of the panchayat to be determined by the legislature of the State. It states that the legislature of a State may by law endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government

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and such law may contain provisions for the devolution of powers and responsibilities upon panchayats at the appropriate level, subject to such conditions as may be specified therein with respect to (a) the preparation of plans for economic development and social justice; and (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. The Eleventh Schedule mentions as many as 29 matters some of which are necessary to be enumerated here to point out that it is only a financially and administratively viable unit which can undertake the schemes of development relating to them. They are: (1) Minor irrigation, water management and watershed development, (2) Social forestry and farm forestry, (3) Small-scale industries, including food processing industries, (4) Khadi, village and cottage industries, (5) Rural housing, (6) Roads, culverts, bridges, ferries, waterways and other means of communication, (7) Rural electrification, including distribution of electricity, (8) Non-conventional energy sources, (9) Poverty alleviation programme, (10) Education, including primary and secondary schools, (11) Technical training and vocational education, (12) Markets and fairs, (13) Health and sanitation, including hospitals, primary health centers and dispensaries, (14) Women and child development, (15) Social welfare, including welfare of the handicapped and mentally retarded, and (16) Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes."

26. So far as the presence of nominee of the Minister-in-charge as member of the Scrutiny Committee is concerned, without prejudice to the validity or otherwise, the State of Chhattisgarh has made a statement that such nomination of language/dialect expert shall be made by the Director Panchayat in case of appointment of Samvida Shala Shikshak Grade-I and by Chief Executive Officer, Zila Pancahyat in case of Samvida Shala Shikshak Grade-II & III. This statement is recorded. In our opinion also, the involvement of Minister or his nominee in the selection is not justified and as such cannot be sustained.

27. It is pertinent to note that under Rule 7 sub-rule (5) of the Rules of 2004, the candidates found qualified after scrutiny shall be called before the scrutinizing Committee to test the knowledge of local language. On this aspect, learned Additional Advocate General was pointedly asked that after Schedule III the note appended 'sthaniya boli ke gyan ke liye'. What does it mean? He stated that it is a 'local dialect', which means the dialect, which is spoken in the locality. The English version however shows 'language'. There is no doubt that Hindi is the official language of the State under Article 345 of the Constitution of India.

28. Article 345 of the Constitution is pertinent and quoted below:

> *"345. Official language or languages of a State- Subject to the provisions of Articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:*
> *Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution."*

29. So far as local dialect is concerned, the Court wanted to ascertain and provided opportunity to the State as well as respective parties. Shri Prashant Mishra, learned Additional Advocate General, stated that he has contacted the authorities and they have been able to provide him the book namely **"Chhattisgarh Vrihad Sandarbh (Naveen Ankdoon EvamTathyon Sahit"**, which is nearer to the point. We have accordingly referred to this book. This shows that there are 41 dialects in the State of Chhattisgarh, which are as under:

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"(केन्द्रिय – क्षेत्रीय) छत्तीसगढी, (2) खलटाही / खलताही / खलवाटी (3) लरिया या लड़िया (4) कलंगा (5) कलंजिया (6) कवर्धाई (7) कांकेर (8) खैरागढ़ी (9) गोरो (10) गौरिया (11) जशपुरी (12) डंगचगहा / डंगचगही / नटी (13) देवार बोली या देवरिया (14) धमदी या धमधी (15) नांदीगाह (16) नागवंशी (17) पंडो (18) पनकी (19) पारधी (20)बहेलिया (21) बिंझवारी या बिंझवाली (22) बिलासपुरी (23) बैगानी (24) भूलिया (25) मरारी (26) रतनपुरी (27) रायपुरी (28) शिकारी (29) सतनामी (30) सदरी–कोरबा (31) सरगुजिया / सुरगुजिया / सुरगुजिहा (32) हलबी (33) अदकुरी (34) चंदारी / चंडारी (35) जोगी (36) धाकड़ (37) नाहरी (38) महरी / मेहरी / मुहारी (39) मिरगानी (40) बस्तरी / बस्तरिया (41) कमारी."

30. In public service when direct recruitments are being made, criterion has to be pure merits and giving weightage to candidates having knowledge of local language is arbitrary. If meritorious person appears for competition, his merit will be defeated if he is poor in local dialects. It clearly violates the right as enshrined under Articles 14 and 16 of the Constitution of India. The Hon. Apex Court considered in great detail all these questions in the case of ***V.N. Sunanda Reddy (Supra)*** and held as under:

> *"In public service when direct recruitments are being made, criterion has to be pure merits and giving weightage to candidates having knowledge of local language is arbitrary. Therefore, if meritorious persons appear for competition, their merit will be defeated if they are poor in local dialects. It clearly violates the right as enshrined under Articles 14 and 16 of the Constitution of India and therefore it also being violation of Constitution, is ultra vires."*

31. The Hon. Apex Court had occasion to consider the selection held and consequential appointments made to the post of Primary School Teachers by the Zila Parishad of various districts in the State of Rajasthan. The Hon. Supreme Court considered the matter in great detail. Learned counsel addressed and referred to the judgment in the case of ***Kailash Chand Sharma (Supra).***

Counsel for the petitioner contended that the matter is squarely covered by the decision of the Hon. Supreme Court. Learned Addl. Advocate General on the other hand tried his best to persuade us that the said case is different.

32. ***Kailash Chand Sharma (Supra)*** is the judgment which is directly on the point. Para 31 of the said judgment is relevant and is quoted below:

> *"31. The two grounds pleaded in justification of preferential treatment accorded to rural area candidates found favour with the Division Bench of the High Court in Baljeet Kaur case and Arvind Kumar Gochar case (decided on 6-4-1994). Shri Rajeev Dhavan appearing for the selected candidates who have filed SLP (C) No.10780 of 2001, did his best to support the impugned circular mainly on the second ground, namely, better familiarity with the local dialect. The learned counsel contends that when the teachers are being recruited to serve in Gram Panchayat area falling within the Panchayat Samiti concerned, those hailing from the particular district and the rural areas of that district are better suited to teach the students within that district and the Panchayat areas comprised therein. He submits that the local candidates can get themselves better assimilated into the local environment and will be in a better position to interact with the students of primary level. Stress is laid on the fact that though the language/mother tongue is the same, the dialect varies from district to district and even with the district. By facilitating selection of local candidates to serve the Panchayat – run schools, the State has not introduced any discrimination on the ground of residence but acted in furtherance of the goal to impart education. Such candidates will be more effective as primary school teachers and more suitable for the job. It is therefore contended that the classification is grounded on considerations having nexus with the object sought to be achieved and is not merely related to residence. We find it difficult to accept this contention, though plausible it is. We feel that undue accent is being laid on the dialect theory without factual foundation. The assertion that dialect and nuances of the spoken language vary from district to district is not based upon empirical study or survey conducted by the State. Not even specific particulars are given in this regard. The*

stand in the counter affidavit (extracted supra) is that 'each zone has its distinct language'. If that is correct, the Zila Parishad should have mentioned in the notification that the candidates should know a particular language to become eligible for consideration. We are inclined to think that reference has been made in the counter to 'language' instead of 'dialect' rather inadvertently. As seen from the previous sentence, the words dialect and language are used as interchangeable expressions, without perhaps understanding the distinction between the two. We therefore take it that what is meant to be conveyed in the counter is that each zone has a distinct dialect or vernacular and therefore local candidates of the district would be in a better position to teach and interact with the students. In such a case, the State Government should have identified the zones in which vernacular dissimilarities exist and the speech and dialect vary. That could only be done on the basis scientific study and collection of relevant data. It is nobody's case that such an exercise was done. In any case, if these differences exist zonewise or regionwise, there could possibly be no justification for giving weightage to the candidates on the basis of residence in a district. The candidates belonging to that zone, irrespective of the fact whether they belong to X, Y or Z district of the zone could very well be familiar with the allegedly different dialect peculiar to that zone. The argument further breaks down, if tested from the stand point of award of bonus marks to the rural candidates. Can it be said reasonably that candidates who have settled down in the towns will not be familiar with the dialect of that district? Can we reasonably proceed on the assumption that rural area candidates are more familiar with the dialect of the district rather than the town area candidates of the same district ? The answer to both the questions in our view cannot but be in the negative. To prefer the educated people residing in villages over those residing in towns – big or small – of the same district, on the mere supposition that the former (rural candidates) will be able to teach the rural students better would only amount to creating an artificial distinction having no legitimate connection to the object sought to be achieved. It would then be a case of discrimination based primarily on residence which is prescribed by Article 16(2)."

33. In view of the aforesaid judgments and the arguments advance by the learned counsel appearing for the parties and the

discussions made hereinabove, in our opinion, Section 47 of the Panchayat Raj Adhiniyam as quoted earlier specifically show that in Janpad Panchayat and Zila Panchayat, there shall be one Education Committee for education including adult education, social welfare of the disabled and the destitutes, women and child welfare, removal of untouchability, relief of distress caused by floods, draught, earthquakes, hail storm, scarcity, locusts warms and other such emergencies, temperance or prohibition, health and sanitation, tribal and harijan welfare. Constitution of India vide Article 40 make it clear that the Panchayat shall be the unit of self-government and according to 11th Schedule of the Constitution, Panchayats have been given exclusive jurisdiction for education including primary and secondary schools. Therefore, it is the duty cast on Panchayats to see that proper education may be provided to inhabitants upto higher secondary levels but as a self-government they can exercise their power only if they are endowed with such powers as required under Section 53(2) of the Adhiniyam. Although for selection of contract teachers, rules have been framed by the State Government but it has not endowed the respective powers in accordance with the said provisions. It is necessary that the State Government itself by notification endow Panchayats with the powers and responsibilities in the matter of appointment of the contract teachers and also it is necessary that the rules should be framed in such a manner which may not encroach the autonomy of the Panchayat and which may provide Panchayat to act as a self-government.

34. By the rules under challenge marks to be awarded on local dialects either 0 or 15. If a candidate who secures all the marks in

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criteria and declared as deficient in local dialects, although he is meritorious but cannot be selected for the post and the same is the case in vise-versa; therefore, such arbitrariness cannot be allowed in the eyes of law, that too against the settled principles under Articles 14 & 16 of the Constitution of India and the settled law by the Hon'ble Apex Court in the cases of ***Kailash Chandra Sharma (Supra)*** and ***V.N. Sunanda Reddy (Supra)***.

35. The last question remains about the guide-lines to be given by the Court. In this regard, para 31 of the judgment of the Hon. Apex Court in the case of ***Kailash Chandra Sharma (Supra)*** clearly stipulates that so far as guide-lines are concerned, the survey is required to be conducted by the State. It is open to the authorities to mention in the notification that the candidates should know a particular language to become eligible for consideration. The authorities should have identified the zone in which vernacular dissimilarities exist and the speech and dialect vary. That could only be done on the basis of scientific study and collection of relevant data. It is nobody's case that such an exercise was done. In that view of the matter, in our opinion, the Courts have their own limitations. We leave it to the State to do needful in accordance with law.

36. Since we have found that the inclusion of Minister or his nominee in the selection process under the rules is not sustainable and the awarding of 0 or 15 marks for knowledge of local dialect is arbitrary, to that extent these petitions stand allowed.

Hande/- Copy of this order be placed in all the connected files.

Before parting, we appreciate the valuable assistance rendered by the learned counsel for the parties.

Sd/-
Ag. Chief Justice

Sd/-
V.K. Shrivastava
Judge

19.2.05